

**FINAL**

**ENVIRONMENTAL IMPACT STATEMENT**

**RULEMAKING**  
**for**  
**THE INCIDENTAL TAKE OF SMALL NUMBERS**  
**OF**  
**FLORIDA MANATEES (*Trichechus manatus latirostris*)**  
**RESULTING FROM GOVERNMENT PROGRAMS**  
**RELATED TO WATERCRAFT ACCESS AND**  
**WATERCRAFT OPERATION**  
**IN THE STATE OF FLORIDA**



**March 2003**

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**(*Trichechus manatus latirostris*) RESULTING FROM GOVERNMENT PROGRAMS**  
**RELATED TO WATERCRAFT ACCESS AND WATERCRAFT OPERATION IN THE**  
**STATE OF FLORIDA**

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***COVER SHEET***

***Responsible Agency:*** The Fish and Wildlife (Service)

***Proposed Action:*** Final Environmental Impact Statement (EIS): The Service has evaluated the impacts of watercraft related incidental take for all four stocks of the Florida manatee (*Trichechus manatus latirostris*) under the Marine Mammal Protection Act (MMPA). The incidental, unintentional take of small numbers of Florida manatees related to government activities that regulate the access and operation of watercraft and watercraft access facilities within the State of Florida may be authorized if the Secretary of the Interior finds that the total take will have a negligible impact on the species or stock.

***Abstract:*** Under the provisions of the MMPA, the Secretary of the Interior may authorize the incidental taking of small numbers of marine mammals in a specified geographic area if the Secretary finds, based on the best scientific evidence available, that the total taking for the authorized period will have no more than a negligible impact on the species or stock. If this finding is made, specific regulations may be established for the activities that describe permissible methods of taking; means of effecting the least practicable adverse impact on the species and its habitat; and requirements for monitoring and reporting. If the Secretary cannot make a finding that the total taking will have a negligible impact on the species or stock, the Secretary must publish a Negative Finding in the Federal Register along with the basis for such a determination.

We have defined the specified geographic area for this proposed action to be the manatees' range within the State of Florida. Long-term studies suggest four regional populations of manatees in Florida--Northwest Stock, Upper St. Johns River Stock (south of Palatka), Atlantic Stock (including the St. Johns River north of Palatka), and Southwest Stock.

For the purpose of managing the Florida manatee under the provisions of the MMPA, we have defined these populations as four separate stocks. Based upon the best available scientific information, we concluded in the Proposed Rule that the total expected takings of Florida manatees related to government activities that regulate the access and operation of watercraft and watercraft access facilities would have more than a negligible impact on one of these stocks. In accordance

with 50 C.F.R. Part 18.27(d)(4), the Service will publish a Finding in the Federal Register upon finalization of a Record of Decision at the close of the comment period below for any stock for which a final finding is made that an expected take may exceed the negligible impact level.

This Final EIS analyzes the environmental and socioeconomic consequences of the proposed action, and alternatives to the proposed action, as required under section 102(2)(c) of the National Environmental Policy Act.

**Comments:** Information regarding this Final EIS is available in alternative formats upon request. Comments and materials received on the EIS, as well as supporting documentation used in the preparation of this Final EIS, will be available for public inspection, by appointment, during normal business hours from 8:00 a.m. to 4:30 p.m. Monday through Friday at the Jacksonville Field Office, U. S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216. You may obtain copies of this document by calling Chuck Underwood of the Jacksonville Field Office at (904) 232-2580 (extension 109). There is a 30-day period after the publication of the NOA in the Federal Register by the U.S. Environmental Protection Agency before signing the Record of Decision, and making a finding on a proposed rule.

**Final Date:** (May 4, 2003)

## ***EXECUTIVE SUMMARY***

### ***Purpose of the Proposed Action***

The purpose of the proposed action is to analyze the feasibility of promulgating regulations in accordance with Section 101(a)(5)(A) (16 U.S.C. 1371(a)(5)(A)) of the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361-1407) that allow the Director of the Fish and Wildlife Service (Service), acting on behalf of the Secretary of the Interior, to authorize the incidental, unintentional take of small numbers of Florida manatees in specified areas as a result of government programs related to watercraft access and watercraft operations in the State of Florida for the next five years (2003 to 2008). Section 101(a)(5)(A) of the MMPA allows the issuance of such regulations, upon request, for periods of not more than five consecutive years for specified activities (other than commercial fishing) within specified geographic areas if the Service finds that the total taking during the specified period will have a negligible impact the species or stock. Where a negligible impact finding cannot be made, the Service must publish that finding and the basis for the finding (50 CFR 18.27(d)(4)). The Service may make a negligible impact finding where mitigating measures will render the impact negligible that would not otherwise be negligible in the absence of these measures (50 CFR 18.27(d)(3)).

### ***Need for the Proposed Action***

The need for this action results from the fact that there currently is no authorization for the incidental, unintentional death, injury, or harassment of Florida manatees associated with watercraft access and use in Florida waters. Thus, there is a need to examine the issue of take of Florida manatees and determine where the incidental, unintentional take of manatees may be authorized.

The Florida manatee is listed as an endangered species under the Endangered Species Act (ESA) of 1973, as amended (87 Stat. 884; 16 U.S.C. 1531 *et seq.*). Both the MMPA and ESA prohibit the incidental take of Florida manatees in the course of otherwise lawful activities, unless authorized. These prohibitions have been in place since 1972 for the MMPA and 1973 for the ESA. Through section 7 of the ESA, the Service can authorize the incidental take of threatened and endangered species that are reasonably certain to occur as a result of Federal actions as long as the specific ESA requirements are met. However, if the listed species is a marine mammal, incidental take regulations under the MMPA must be in place before incidental take under the ESA can be authorized.

In *Save the Manatee Club, et al. v. Ballard, et al.*, Civil No. 00-00076 (D.D.C.), several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers alleging violations of the ESA, MMPA, National Environmental Policy Act (NEPA), and Administrative Procedures Act. Four groups representing development and boating interests intervened. Following negotiations, a Settlement Agreement was approved by the court on January 5, 2001. The preparation of this Environmental Impact Statement (EIS) and publication of a final MMPA incidental take determination in the Federal Register is required under the terms of the Settlement Agreement.

### ***Trends in Florida Manatee Mortality***

Since the 1980s, manatee mortality from all causes (human and non-human related) has increased steadily. Average annual mortality in the 1990s (228 individuals) was nearly twice that of the 1980s (118 individuals). This trend continued in 2002, when 305 manatee deaths were recorded, 95 of which were as a result of watercraft collisions, an all time record.

The Florida Manatee Recovery Plan, Third Revision (2001), states that the largest known human-related cause of manatee deaths is collisions with watercraft. Data collected during manatee carcass salvage operations in Florida confirm that since 1976, a total of 1,074 manatees (from a total carcass count of 4,326) died as a result of collisions with watercraft. Between 1976 and 2000, the total number of carcasses collected (*i.e.*, deaths due to all causes) increased at a rate of 6.0 percent per year, while deaths caused by watercraft strikes increased by 7.2 percent per year. In 2000 and 2001, watercraft related deaths accounted for 29 percent and 25 percent, respectively, of the total number of known manatee deaths. During the past six years (1997 to 2002), watercraft related mortality has been the highest on record, with a range of 52 to 95 individuals per year. Approximately 75 percent of all watercraft related manatee mortality has occurred in 11 Florida counties: Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota (Florida Marine Research Institute Manatee Mortality Database 2000).

Based on the 2001 Statewide aerial synoptic survey, it is believed that the minimum population of the Florida manatee is 3,276 individuals. During the 1980s and mid-1990s some scientists believe the manatee population increased in size; however, if population growth rates level off and manatee mortality continues to increase, a decline in abundance is inevitable (Marine Mammal Commission Annual Report to Congress 2000). Because the manatee has a low reproductive rate, a decrease in adult survival due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.* 1985). It is believed that a one percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.* 1997).

### ***Trends in Watercraft Usage in Florida Waters***

Concurrent with the increase in watercraft related manatee mortality, human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. Additionally, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998.

As a consequence of the increasing human population growth and visitation, the number of watercraft using Florida's waters has steadily increased. In 2001, 943,611 vessels were registered in the State of Florida. This represents an increase of 42 percent since 1993. The Florida Department of Community Affairs estimates that between 300,000 and 400,000 boats registered in

other States use Florida waters each year. Thus, with the projected increase in Florida's human population, coupled with an increase in watercraft usage on Florida's waters, interactions between boats and manatees are expected to significantly increase into the foreseeable future.

### ***Activities That Affect Manatees***

In the State of Florida, local, State and Federal agencies engage in a variety of activities related to watercraft that may affect manatees. Many of these activities relate to the use and regulation of watercraft operated in Florida waters accessible to manatees, including: (1) regulating boater behavior on the water (*e.g.*, vessel registration and marine events); (2) authorizing construction of watercraft access facilities (marinas, docks, boat ramps); (3) funding construction of watercraft access facilities; (4) operating watercraft access facilities; and (5) operating watercraft.

### ***Alternatives Considered***

The Service has determined that there are four separate stocks of manatees in Florida based on manatee demographics. The Service considered alternatives for incidental take rulemaking based on these four different stocks. Because the Southwest Stock appears to be decreasing such that MMPA incidental take could not be authorized at this time, the Service proposed a finding that expected take would have more than a negligible effect on this stock.

The range of alternatives considered in this Final EIS include the possibility that none of the stocks are candidates for negligible impact findings, that one of the stocks (Upper St. Johns River) is a potential candidate, that two stocks (Upper St. Johns River and Northwest) are potential candidates, and that three stocks (Upper St. Johns River, Northwest, and Atlantic) are potential candidates. Given this range of possibilities, and the time frame allotted for detailed analysis under the Settlement Agreement, we determined that evaluating an array of reasonable possibilities (*e.g.*, no stocks are candidates to three of four stocks are candidates for findings of negligible impact) is the most efficient means of understanding the impacts of any single possibility. Focusing on the two ends of likely outcomes allows meaningful analysis of any subset combination of possible findings since all effects have been analyzed and presented by stock. The alternatives that describe each end of the reasonable findings spectrum are examined in detail in this Final EIS as follows:

**Alternative 1:** No Action - A negative finding of negligible impact (impact exceeds negligible) in the Upper St. Johns River, Northwest, Atlantic, and Southwest stocks of the Florida manatee; and

**Alternative 3:** A finding of negligible impact in the Northwest, Upper St. Johns River, and Atlantic stocks, with mitigating measures for the Atlantic Stock, and a negative finding of negligible impact (impact exceeds negligible) for the Southwest Stock.

The Service considered two additional alternatives, which fit within the range of possibility selected for detailed analysis, but did not address them in detail, as follows:

**Alternative 2:** A finding of negligible impact only for the Northwest and Upper St. Johns River stocks; and

**Alternative 7:** A finding of negligible impact only for the Upper St. Johns River Stock.

The Service identified three additional alternatives, which were precluded at the time of the proposed finding due to manatee demographic trends and the proposed negative finding of negligible impact in the Southwest Stock:

**Alternative 4:** A finding of negligible impact only for the Northwest and Upper St. Johns River stocks, a proposed finding of negligible impact for the Atlantic Stock with mitigating measures, and a negative finding of negligible impact (impact exceeds negligible) for Tampa Bay area (a subset of the Southwest Stock);

**Alternative 5:** A finding of negligible impact for all four stocks as a result of government activities in Florida; and,

**Alternative 6:** A finding of negligible impact for all four stocks in Florida as a result of the direct regulation of individual boaters.

The four primary factors listed below were used for alternatives analysis:

- (1) seeking an alternative which met the negligible impact standard of the MMPA;
- (2) seeking the alternative which resulted in the least practicable impacts to manatees;
- (3) seeking the alternative which resulted in the least practicable impacts to manatee habitat; and
- (4) seeking an alternative which minimized socioeconomic impacts.

**Alternative 3** was identified as our proposed action in the Draft EIS. Based on new scientific information, we are reevaluating that recommendation. Regardless of the alternative selected for implementation, we will finalize manatee population modeling with formal peer review and reconsider the promulgation of incidental take regulations, as appropriate. We will also continue to implement necessary manatee conservation measures throughout Florida, coordinate with all affected parties and encourage them to also implement conservation measures for the manatee.

The Service continues to review permit applications under section 7 of the ESA on a case-by-case basis, to determine which permits are reasonably certain to cause watercraft related incidental take of manatees. Section 7 determinations for permits, which are not reasonably certain to cause incidental take of manatees may be issued accordingly by the Corps that is the Federal agency responsible for the issuance of such permits. In some instances, permits may be found to be reasonably certain to cause incidental take of manatees, whereupon the Service will recommend permit denial in order to prevent unauthorized take of manatees from occurring.

### ***Socioeconomic Considerations***

As no incidental take would be authorized under Alternative 1 (No Action), this alternative would impose no incremental economic impacts to the economic baseline. Under the No Action Alternative, the Service and other agencies would continue their existing activities related to manatee conservation efforts. The coordination of Corps permitting and Service review under Section 7 of the Endangered Species Act, and related socioeconomic impacts, are expected to continue unchanged.

Alternative 3 would lead to a positive regional economic impact of between \$0.7 million and \$16.7 million due to an increase in the revenues of the marine recreation industry and \$0.3 million due to an increase in the revenue of the marine construction industry, for a total positive regional economic impact of between \$1 million and \$17 million in year five of a proposed rule. Overall, the positive regional economic impact expected under Alternative 3 would reduce negative baseline regional impacts by eight to 31 percent.

### ***Issues Raised by the Public***

Beginning in January 2001, the Service held a series of meetings with the affected agencies to discuss the scope of government related activities and incidental take rulemaking. At the Manatee Population Ecology and Management Workshop in April 2002, the Service discussed the issue of incidental take rulemaking with scientists and managers involved in manatee research and conservation. On June 10, 2002, the Service published a notice in the Federal Register announcing our intent to prepare an EIS to evaluate the effects on manatees of a rulemaking to authorize incidental take; public comments were solicited. On November 14, 2002, the Service published a Proposed Rule in the Federal Register. In December 2002, the Service conducted seven public hearings throughout Florida.

In response to these notices, meetings, and public hearings, over 8,000 written comments were received. The majority of these comments related to manatee populations' issues; NEPA, ESA and MMPA concerns; recommendations regarding the proposed determination of negligible impact under the MMPA; identification of information needs believed necessary to adequately address issues of concern; as well as socioeconomic and public involvement concerns. The Service has examined and fully considered all comments submitted by the public in developing this Final EIS.

### ***Areas of Controversial/Unresolved Issues***

The issue of how to reduce the current levels of watercraft related incidental take of manatees to acceptable levels remains controversial. It is important that the respective local, State, and Federal agencies with authority for watercraft access and watercraft operation in Florida waters partner together for the benefit of the manatee, the boating public, conservation organizations, marine industry, and others. To help resolve this issue, mediation process of affected parties is currently underway.



Based on public input, the issue of who should be held responsible for watercraft related incidental take of manatees also remains controversial. There are those who believe that government programs which authorize watercraft access and regulate watercraft operation may not be directly responsible for incidental, unintentional take of manatees, and that only the individual boater on the water should be held accountable. On the other hand, the Service believes there are instances where a causal link ties government authorization and regulation of watercraft access and operation in Florida waters to the incidental, unintentional take of manatees. Under Section 7 of the ESA, the Service is obligated to analyze the direct, indirect, interrelated, and interdependent effects of these government actions on manatee mortality and harassment, as well as manatee habitat, and cannot authorize incidental take that is reasonably certain to result from Federal actions until incidental take authorization is in place under the MMPA.

Finally, there is the overall emotional nature of regulating individual boaters in Florida. In general, there is vocal opposition by some boaters and associated interests to any watercraft related regulation whatsoever. On the other hand, there are equally vocal members of the public who feel that zero incidental take of Florida manatees is the only option to follow.

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## **I. INTRODUCTION**

### **A. Purpose of the Proposed Action**

The purpose of the proposed action is to examine the feasibility of publishing regulations in accordance with Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361-1407) that allow the Director of the Fish and Wildlife Service (Service), acting on behalf of the Secretary of the Interior to authorize the incidental, unintentional take of small numbers of Florida manatees in specified areas as a result of government programs related to watercraft operations and watercraft access in the State of Florida for the next five years (2003 to 2008). Section 101(a)(5)(A) of the MMPA authorizes the issuance of these regulations, upon request, for periods of not more than five consecutive years for specified activities (other than commercial fishing) within specified geographic areas. Upon promulgation, the regulations would allow the Director of the Service to authorize the incidental, unintentional take of Florida manatees in Florida resulting from government programs related to watercraft access and watercraft operation. The publication of regulations is subject to a finding that the total authorized taking during the specified five year period will have a negligible impact on Florida manatees. In specified areas where a negligible impact finding cannot be made, mitigating measures can be applied to reach a negligible finding for that specified area. If mitigating measures cannot render the take in a specified area to a negligible level, then a Negative Finding is made.

Subsequent authorization from the Service for the incidental, unintentional take of Florida manatees would require applicant(s) to apply for and receive a Letter of Authorization (LOA). The issuance of a LOA is subject to the requirements of Section 101(a)(5)(A)(ii) of the MMPA, monitoring and reporting requirements, and other terms and conditions the Director of the Service deems appropriate. When Congress amended the MMPA in 1994, section 101(a)(5)(E) was added to the Act. This section authorized incidental take of ESA-listed marine mammals related to commercial fishing. It uses the "Negligible Impact" standard, the same standard in Section 101(a)(5)(A) for this proposed action. The Congressional report (Report 103-439) states: "The Committee intends that issuance of these permits should be considered a Federal agency action for purposes of the Endangered Species Act." These permits are issued to non-Federal, nongovernmental entities, and there is a clear congressional intent that the take be authorized per section 7 of the ESA. Below is a more detailed discussion of MMPA as it relates to this proposed action.

The MMPA of 1972 (16 U.S.C. 1361-1407) sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. "Take" as defined by the MMPA and its implementing regulations (50 CFR Part 18) means "to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following--the collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal."



“Harassment” is defined under the MMPA as, “any act of pursuit, torment, or annoyance which 1) has the potential to injure a marine mammal or marine mammal stock in the wild or 2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.”

The prohibitions on take apply to all persons, including Federal, State, and local government agencies, with the exception of humane taking (including euthanasia) by government officials while engaged in their official duties, if such taking is (1) for the protection or welfare of a marine mammal; (2) for the protection of the public health and welfare; or (3) the nonlethal removal of nuisance animals. When feasible, steps designed to ensure return of such animals to their natural habitat, if not killed in the course of such taking, must be implemented. (16 USC 1379(h)).

Section 101(a)(5)(A) of the MMPA allows the Secretary of the Interior, through the Director of the Service, upon request, to authorize by specific regulation the incidental, unintentional take of a small number of marine mammals by United States (U.S.) citizens engaged in specific identified activities (other than commercial fishing) within specific geographic areas. This is the mechanism by which incidental, but not intentional, take of small numbers of marine mammals may be authorized in accordance with Federal law for activities other than commercial fishing if certain findings are made and regulations are enacted pursuant to 50 CFR 18.27. The Director of the Service must find that the total of such taking during the specified time period (which cannot be more than five consecutive years) will have no more than a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses. The subsistence provision is not applicable to Florida manatees.

The regulations implementing the MMPA define “negligible impact” as, “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival” (50 CFR 18.27(c)). If such findings are made, the Service establishes specific regulations setting forth permissible methods of taking pursuant to such activity, means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements for monitoring and reporting such taking. If a finding cannot be made that the total taking will have a negligible impact on the species or stock, the “negative finding” and the basis for denying the request for the incidental take must be published in the Federal Register (50 CFR 18.27(d)(4)).

Following publication of incidental take regulations, U.S. citizens (including government agencies) who engage in the specified activities in the specified area can apply for a LOA, which, if granted, would authorize incidental take associated with the applicant's activities. As a result of committing to specific measures that minimize the applicant's impact on the species or stock and ensure that the total taking remains below the negligible level, the applicant receives authorization for any take that occurs and that would otherwise be unlawful under the MMPA. General procedures for obtaining a LOA are described at 50 CFR 18.27(f).

This Final Environmental Impact Statement (EIS) identifies alternatives to the proposed action, and provides a detailed analysis of the environmental and socioeconomic effects of the alternatives considered in detail, as required under section 102(2)(c) of the NEPA.

## **B. Need for the Proposed Action**

To date, there is no authorization for the incidental, unintentional death, injury, or harassment of Florida manatees caused by these otherwise legal activities, such as watercraft related activities. Thus, there is a need to examine the issue of take of Florida manatees and determine whether the incidental, unintentional take of manatees may be authorized. The Florida Manatee Recovery Plan (Recovery Plan), Third Revision (USFWS 2001), states that the largest known human-related cause of manatee deaths is collisions with watercraft. Between 1976 and 2000, the total number of carcasses collected (*i.e.*, deaths due to all causes) has increased at a rate of 6.0 percent per year, while deaths caused by watercraft strikes increased by 7.2 percent per year. In 2000 and 2001, watercraft related deaths accounted for 29 percent and 25 percent, respectively, of the total number of known manatee deaths. During the past five years (1997 to 2002) watercraft related deaths have been the highest on record ranging from 54 to 95.

In the State of Florida, Federal, State and local agencies engage in a variety of activities related to watercraft that may result in the taking of manatees. These activities relate to the access and use of watercraft operated in Florida waters accessible to manatees, including:

- (a) regulating boater behavior on the water (*e.g.*, boating speed zones and vessel registration);
- (b) authorizing construction of watercraft access facilities (marinas, docks, boat ramps);
- (c) funding construction of watercraft access facilities;
- (d) operating watercraft access facilities; and
- (e) operating watercraft.

## **C. Settlement Agreement (*Save the Manatee Club, et al. v. Ballard, et al.*)**

In *Save the Manatee Club, et al. v. Ballard, et al.*, Civil No. 00-00076 (D.D.C.), several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the Endangered Species Act (ESA), MMPA, National Environmental Policy Act (NEPA), and Administrative Procedure Act (APA). Four groups representing development and boating interests intervened. Following extensive negotiations, a Settlement Agreement was approved by the court on January 5, 2001.

The suit primarily centered on the adequacy of the section 7 consultation process regarding Corps permits potentially affecting the Florida manatee; specifically, the Plaintiffs charged that the Service issued biological opinions regarding applications for Corps permits that did not appropriately assess effects to manatees and critical habitat, in violation of the ESA. Additionally, the Plaintiffs charged that the Service issued a recovery plan that lacked objective measurable criteria; and issued guidance on assessing the effects of watercraft access facilities on manatees (Manatee Key and 1999 guidance), which were contrary to the ESA and the APA.

The Settlement Agreement required that the Service: assess the need for additional manatee refuges and sanctuaries at an ecosystem level, focusing on areas needed for recovery of the species; revise the Manatee Recovery Plan; develop incidental take regulations under the MMPA, if appropriate; describe by letter, its continued increased effort to enforce manatee speed zones; revise the Service's

“interim guidance” under section 7 of the ESA for addressing potential manatee impacts associated with development and permitting of new watercraft access facilities and make it available for public review; and provide written progress reports on the settlement every six months.

Under the terms of the Settlement Agreement, the Service agreed to the following:

- Submit a proposed rule for new refuges and sanctuaries to the Federal Register by April 2, 2001, and submit a final rule by September 28, 2001. Subsequent to the Federal settlement, the Florida Fish and Wildlife Conservation Commission (FWC) also voted to settle *Save the Manatee v. Egbert*, Case No. 90-00-400CIV17-WS (N.D.Fla) (the State case). That settlement, which was entered by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed refuges and sanctuaries rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the Proposed Rule being submitted to the Federal Register on August 3, 2001. The Service also agreed to evaluate the propriety of invocation of our emergency sanctuary/refuge designation authority. The Service published an advance notice of proposed rulemaking in the Federal Register on September 1, 2000, and held a series of six public workshops in December 2000. The Service received 1,752 comments in response to the advance notice, and 396 people attended the public workshops. The Proposed Rule was published in the Federal Register on August 10, 2001 (66 FR 42318). A 60-day comment period followed this publication. In addition, we held four public hearings in September 2001, to provide the public an opportunity to comment. The Service held these hearings in Crystal River, Clearwater, Venice, and Melbourne, Florida. As a result of both the public hearings and written submissions, approximately 3,500 comments were received. These comments are summarized and responded to in the “Summary of Comments and Recommendations” section of the final rule designating two of the sixteen proposed sites dated January 7, 2002 (67 FR 680). On July 9, 2002, the U.S. District Court for the District of Columbia ruled that the Federal government violated the Settlement Agreement by failing to designate a sufficient number of refuges and sanctuaries throughout peninsular Florida. The Court ruled that we must complete the rulemaking with respect to the 16 proposed areas contained in the August 10, 2001, proposal. On July 31, 2002, the Court subsequently determined that this must be completed by November 1, 2002. The Court also determined that the 13 sites in this final rule, in conjunction with the two sites established previously, “would satisfy the general distribution requirement” of the Settlement Agreement. On September 20, 2002, we published an emergency rule designating seven sites as manatee refuges and sanctuaries on Florida’s west coast for a period of 120 days (67 FR 59408). On November 1, 2002, we submitted a final rule to the Federal Register designating 13 manatee protection areas in eight Florida counties. One area in Citrus County, one in Pinellas County, and two in Hillsborough County are designated as manatee sanctuaries in which all waterborne activities would be prohibited, with exceptions for adjoining property owners. The remaining nine areas located in Citrus, Hillsborough, Sarasota, Charlotte, De Soto, Lee, and Brevard counties are designated as manatee refuges in which certain waterborne activities are prohibited or regulated. We are also withdrawing the South Gandy Navigation Channel Manatee Refuge from our rule because Pinellas County has more comprehensive measures in place at this site.

- Revise the Recovery Plan. The Service agreed by December 1, 2000, to make a draft revised Recovery Plan available for public review and comment, and to circulate our final revised Recovery Plan for signature no later than February 28, 2001. The Service published a draft revised Recovery Plan on November 30, 2000, and received over 500 comments. The Plaintiffs and Interveners agreed to new dates for development of a second draft and finalization of the Recovery Plan. As a result of the comments, the Service made substantial revisions to the Recovery Plan and subsequently issued a second draft for public review and comment on July 10, 2001. The Recovery Plan was finalized on October 30, 2001.
- Pursue a rulemaking proceeding to consider development of incidental take regulations under the MMPA. By March 6, 2001, the Service agreed to submit to the Federal Register an advance notice of proposed rulemaking; invite by letter the Corps and other entities that conduct activities which may influence factors relating to effects of watercraft on manatees to participate in the MMPA rulemaking process; and promptly provide copies of the Federal Register notice and invitation letters to the Plaintiffs and Interveners. The advance notice was published in the Federal Register on March 12, 2001 (66 FR 14924), and copies of the advance notice and invitation letters were mailed to the Plaintiffs and Interveners on March 6, 2001. A notice of intent to prepare an EIS was published in the Federal Register on June 10, 2002 (67 FR 39668). If the requirements of the MMPA cannot be met, the Service must notify the Plaintiffs and Interveners as soon as practicable, and publish a negative finding in the Federal Register with the basis for denying the request.
- On March 6, 2001, the Service furnished Plaintiffs and Interveners with a letter describing how the Service would spend increased enforcement resources in FY 2001.
- Revise and make available for public review, our “interim guidance” for addressing potential manatee impacts associated with development and permitting of new watercraft access facilities. The Service was required to submit this document by March 6, 2001. The revised document appeared in the Federal Register on March 14, 2001 (66 FR 14924-32). The Service agreed to provide at least 30 days of public comment and actually provided 60 days comment on the revised draft guidance. The final decision on the guidance was released to the public on August 13, 2001, and published in the Federal Register on August 21, 2001 (66 FR 43885). On January 22, 2003, the Service’s Director issued a memorandum concerning “Consultation Procedures to be Followed for All Watercraft-related Access Activities Occurring within Peninsular Florida.” This memorandum is a management directive which required that the formal section 7 consultation procedures (50 C. F. R. 402.14) shall be used until May 5, 2003, for every proposed watercraft related activity within peninsular Florida that “may affect” manatees.
- Provide written progress reports on the status of tasks agreed upon in the Settlement Agreement every six months. The first report was provided to the parties on June 7, 2001. Subsequent reports were provided in December 2001, June 2002, and January 2003.
- Provide copies of concurrence and nonconcurrence letters to Plaintiffs and Interveners. Whenever the Service sends a letter to the Corps in response to the Corps’ determination that a project “may affect” the manatee or “may affect but is not likely to adversely affect” the

manatee, the Service is required to concurrently make a copy of the correspondence available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the letter by U.S. mail or electronically. Until such time as the Service establishes a web-based system, the Service will forward copies by U.S. mail. These letters have been provided accordingly via the mail.

- Provide copies of biological opinions. Whenever the Service issues a final biological opinion regarding the effect of a particular project on manatees or manatee critical habitat, the Service agreed to concurrently make a copy of that biological opinion available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the opinion by U.S. mail or electronically. Until such time as the Service establishes a web-based system, the Service will forward copies by U.S. mail. These biological opinions have been provided accordingly via the mail.

#### **D. Public Involvement, Review and Consultation**

##### **1. Public/Agency Meetings**

The Service first began exploring the possibility of publishing MMPA incidental take regulations with other potentially affected agencies a meeting on January 11, 2000. This meeting was attended by representatives from the Service, FWC, Corps, Florida Department of Environmental Protection (DEP) and the U.S. Coast Guard (USCG). We held a subsequent meeting with the Corps on September 15, 2000, and another interagency meeting was held on September 27, 2000, which included representatives from the Service, FWC, DEP, Corps, Marine Mammal Commission (MMC), South Florida Water Management District (SFWMD), St. Johns River Water Management District (SJWMD), Southwest Florida Water Management District (SWFWMD), Suwannee River Water Management District (SRWMD), Florida Inland Navigation District (FIND), and Florida Department of Transportation (FDOT). These three meetings explored basic issues related to the requirements of the MMPA with respect to agency jurisdictions and potential means of structuring a proposed rule.

In conjunction with the publication of the advanced notice of the proposed rulemaking, the Service sent letters to specific agencies on March 6, 2001, inviting them to participate in this rulemaking process. These agencies included the Corps, USCG, National Park Service (NPS), U.S. Forest Service, DEP, FWC, FDOT, SJWMD, SFWMD, SRWMD, SWFWMD, FIND, and West Coast Inland Navigation District (WCIND). The Service received affirmative responses from the Corps, DEP, USCG, NPS, SJWMD, and FIND. These agencies met on October 30, 2001, to further discuss the rulemaking process. An additional meeting was held with the NPS on December 5, 2001, to further discuss their role in the process. On April 23, 2002, the Service sent letters to the agencies that responded to our invitation, requesting that they provide information regarding their programs and activities that have a potential to affect manatees.

Recognizing the central role of the FWC in manatee conservation, the Service held several meetings to discuss the Proposed Rule. In addition to numerous staff level discussions, meetings between our agencies occurred on January 9, 2002, April 10, 2002, July 2, 2002, and September 16, 2002.

The Service also sought input from the scientific community specific to the negligible impact determination. We met with a representative from the Florida Marine Research Institute (FMRI) to discuss modeling on November 28, 2001. We also discussed potential methodologies for the negligible impact determination at the Manatee Population Ecology and Management Workshop on April 2 through 4, 2002. A follow-up meeting to the workshop was held on June 5 and 6, 2002, to further discuss potential methods for making the negligible impact determination.

## 2. Advanced Notice of Proposed Rulemaking

An advanced notice of proposed rulemaking and request for public comments was published in the Federal Register on March 12, 2001 (66 FR 14352). Thirteen comment letters were received from private citizens, marine industry groups, environmental groups, one local government, and the MMC. See Appendix N for a listing of comments received.

## 3. Notice of Intent to Prepare an Environmental Impact Statement

A notice of intent to prepare a Draft EIS and request for public comments was published in the Federal Register on June 10, 2002 (67 FR 39668). The Service received 188 comment letters from private citizens, marine industry groups, environmental groups, and a recreational boating group. More than half (103) of the letters were from members or supporters of Save the Manatee Club (SMC). See Appendix N for a listing of comments received.

## 4. Proposed Rule and Draft Environmental Impact Statement

On November 14, 2002, the Service published a Proposed Rule and Draft EIS to establish regulations authorizing the incidental take of a small number of Florida manatees resulting from government activities related to watercraft and watercraft access facilities (66 FR 69078).

## 5. Public Hearings and Comments Received

The Service held a series of public hearings regarding the Proposed Rule in December 2002. Approximately 3,000 people attended the public hearings, and we received over 8,000 written comments in response to the Federal Register notice (see Appendix N Comments and Responses).

# **E. Regulatory Framework Affecting the Proposed Action**

## 1. Federal Laws

### a. National Environmental Policy Act

The NEPA of 1969, amended (42 U.S.C. 4321-4347), requires that all Federal agencies prepare detailed environmental impact statements for "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." Federal agencies are directed to employ an interdisciplinary approach in related decision making and develop means to ensure that environmental values are given appropriate

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consideration, along with economic and technical considerations. This statute established a Council on Environmental Quality (CEQ) in the Executive Office of the President with specific duties and functions. CEQ promulgated Regulations for Implementing the Procedural Provisions of NEPA in 40 CFR 1500-1508, as of July 1, 1986.

In compliance with the Settlement Agreement described above, the Service has prepared this Final EIS consistent with the requirements of NEPA.

#### **b. Marine Mammal Protection Act**

The MMPA of 1972, as amended (16 U.S.C. 1361-1407), established a Federal responsibility to conserve marine mammals with management vested in the Department of Interior (DOI) for sea otter, walrus, polar bear, dugong, and manatee. With specified exceptions, the MMPA establishes a moratorium on the taking and importation of marine mammals as well as products taken from them, and establishes procedures for waiving the moratorium and transferring management responsibility to the States.

Amendments enacted in 1981 established conditions for permits to be granted to take marine mammals "incidentally" in the course of commercial fishing. Take, including incidental take, is prohibited unless authorized. However, section 101(a)(5)(A) of the MMPA allows the Secretary to authorize the incidental take of depleted marine mammals upon request, for periods of not more than five consecutive years for specified activities (other than commercial fishing) within specified geographic areas if the Service finds that the total taking during the specified period will have a negligible impact the species or stock.

The Secretary of Interior, through the Service, is responsible for the conservation and management of the Florida manatee. Section 3(2) of the MMPA defines "conservation" and "management" to mean the "collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations, as well as regulated taking."

In compliance with the Settlement Agreement described above, the Service has prepared this Final EIS for the Florida manatee consistent with the requirements of NEPA.

#### **c. Endangered Species Act**

The ESA of 1973, as amended (16 U.S.C. 1531-1544) provided for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend, both through Federal action and by encouraging the establishment of State programs. Section 7(a)(1) of the ESA requires that Federal agencies utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered and threatened species. Pursuant to section 7(a)(2), each Federal agency must consult with the Service to insure that any action

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authorized, funded or carried out by them is not likely to jeopardize the continued existence of listed species or adversely modify their critical habitat. The consultation process requires that Federal agencies prepare biological assessments in cases where the Secretary of the Interior has advised that a listed species may be present.

Section 9 of the ESA contains a number of prohibitions applicable to endangered species, including importation, exportation, taking, and various activities involving interstate or foreign commerce.

In compliance with the Settlement Agreement described above, the Service will conduct section 7(a)(2) consultation on the proposed action in the Final EIS for the promulgation of incidental take regulations for the Florida manatee consistent with the requirements of the ESA. Subsequent authorization from the Service for the incidental, unintentional take of Florida manatees would require applicant(s) to apply for and receive a LOA. The issuance of a LOA may be subject to NEPA and ESA compliance

#### d. Coastal Zone Management Act

Section 307(c) of the Coastal Zone Management Act (CZMA) of 1972, as amended (16 U.S.C. 1456(c)) requires Federal agencies conducting activities, including development projects, directly affecting a State's coastal zone, to comply with the maximum extent practicable with an approved State coastal zone management program. The Act also requires any non-Federal applicant for a Federal license or permit to conduct an activity affecting land or water uses in the State's coastal zone to furnish a certification that the proposed activity will comply with the State's coastal zone management program. Generally, no permit will be issued until the State has concurred with the non-Federal applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the State's coastal zone management program. (See 15 CFR part 930.)

If a Federal activity or issuance of a Federal license or permit will directly affect the coastal zone, the Federal agency shall make a consistency determination which will be submitted to the State for its review and concurrence.

#### e. Clean Water Act

Section 404 of the Clean Water Act (CWA) of 1977, as amended (33 U.S.C. 1344) requires that the Corps regulate the discharge of dredged or fill material in waters of the U.S. by reviewing permit applications for proposed development activities. As described above, the Service' interim strategy provides guidelines for the review of section 404 permits as they relate to the permitting of watercraft access facilities (*e.g.*, boat ramps, marinas) in Florida, in compliance with the Settlement Agreement. The promulgation of this rule would allow the Service to authorize the incidental, unintentional take of manatees resulting from the issuance of such permits for these types of development activities in Florida, subject to the issuance of a LOA to government agency responsible for the authorization of section 404 permits.



f. Rivers and Harbors Act

Under the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Corps regulates the permitting of structures (*e.g.*, docks, marinas) in waters of the United States. As described above, the Service's interim strategy provides guidelines for the review of section 10 permits as they relate to the permitting of watercraft access facilities in Florida, in compliance with the Settlement Agreement.

The promulgation of this rule would allow the Service to authorize the incidental, unintentional take of manatees resulting from the issuance of such permits for these types of development activities in Florida, subject to the issuance of a LOA to the government agency responsible for the authorization of section 10 permits.

2. State Laws

a. Florida Endangered and Threatened Species Act

The Florida Endangered and Threatened Species Act of 1977 (Section 372.072, Florida Statutes) establishes conservation and wise management of endangered and threatened species to be the policy of the State of Florida, and provides for research and management to conserve and protect endangered and threatened species to be the intent of the legislature. This act confers the responsibility for research and management of these State-listed species to the FWC.

b. Florida Manatee Sanctuary Act

The Florida Manatee Sanctuary Act (Section 370.12, Subsection 2, Florida Statutes) designates the manatee a Florida State marine mammal and establishes the State of Florida as a manatee refuge and sanctuary. This Act confers the responsibility for carrying out the law enforcement provisions to the FWC. Legislative amendments in 2002 include the statement that "the protections extended to and authorized on behalf of the manatee by this act are independent of, and therefore are not contingent upon, its status as a State- or federally-listed species."

The promulgation of this rule would allow the Service to authorize the incidental, unintentional take of manatees resulting from the issuance of such permits for FWC activities related to the Florida Manatee Sanctuary Act in Florida, subject to the issuance of a LOA

**F. Affected Agencies**

1. Federal Agencies

a. The Fish and Wildlife Service

The Service shares responsibility with other Federal and State agencies for the protection of the Nation's fish and wildlife resources and their habitats. The Fisheries and Ecological Services programs are responsible for development of policies and programs for the protection and stewardship of certain species covered in the ESA and MMPA.

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The Service engages in a variety of activities related to watercraft that may affect manatees, positively or negatively. The Service's Federal Aid in Sport Fish Restoration Program, as authorized by the Federal Aid in Sport Fish Restoration Act of 1950, as amended (16 U.S.C. 777-777k). This Act authorizes funding the States for the restoration, conservation, management, and enhancement of sport fish. These funded activities include the construction of boat ramps and attendant facilities. The Service also has numerous boat ramps or access facilities on a variety of National Wildlife Refuges (NWR) throughout peninsular Florida, which can be accessed by the public and conducts watercraft related activities on the refuge that may affect manatees. Therefore, the Service is subject to the MMPA rule for the incidental, unintentional take of Florida manatees.

#### b. Marine Mammal Commission

The MMPA contains provisions (sections 201 and 202) for the establishment of the MMC. The MMC must:

- (a) review Federal activities pursuant to existing laws and international conventions relating to marine mammals;
- (b) continually review the condition of the marine mammal stocks, methods of protection and conservation, humane means of taking, and research programs;
- (c) make recommendations to the Secretary of the Interior (in the case of the Florida manatee), regarding:
  - additional measures necessary or desirable to further the policies of the MMPA;
  - marine mammal conservation;
  - marine mammal international agreements; and
  - revisions to the lists of endangered and threatened species pursuant to the ESA.

Thus, while the MMC does not conduct specific activities resulting in the potential for the incidental, unintentional take of Florida manatees, the MMC has overview and consultative responsibilities for this species.

#### c. U.S. Army Corps of Engineers

The Corps has responsibility for determining compliance with all regulatory requirements associated with permit applications pursuant to section 404 of the CWA, and section 10 of the Rivers and Harbors Act of 1899 required for all construction activities in Waters of the United States. The Corps section 10/404 permit program is an overarching Federal authorization required for the construction of docks, marinas and boat ramps in Florida. As such, any other Federal or State program that permits water-related activities are also required to obtain a Corps permit to conduct activities that may affect manatees in the waters of Florida. Therefore, an assessment of the Corps' permitting program would be a thorough analysis of the actions occurring within the State.

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As noted previously, the promulgation of this rule would allow the Service to authorize the incidental, unintentional take of manatees resulting from the issuance of such permits for section 10/404 permits for these types of development activities in Florida, subject to the issuance of a LOA to the Corps.

#### d. National Oceanic and Atmospheric Administration

The mission of the National Oceanic and Atmospheric Administration (NOAA) is to explore, map, and chart the global ocean and its living resources and to describe, monitor, and predict conditions in the atmosphere, ocean, sun, and space environment, issue warnings against impending destructive and natural events, develop beneficial methods of environmental modification, and assess the consequences of inadvertent environmental modification over several scales of time.

The Secretary of Commerce has delegated his/her functions under the MMPA to the Administrator of the NOAA, who in turn has delegated them to the Director of the National Marine Fisheries Service (NOAA-Fisheries). This agency shares responsibility with other agencies for the protection of the Nation's fish and wildlife resources and their habitats. NOAA-Fisheries is responsible for development of policies and programs for the protection and stewardship of several species covered under the ESA and the MMPA. The Secretary of Commerce has also delegated his/her authority to designate marine sanctuaries to NOAA.

NOAA manages marine sanctuaries and reserves in waters inhabited by Florida manatees (*e.g.*, Florida Keys National Marine Sanctuary, Rookery Bay National Estuarine Research Reserve) and their activities have the potential to take manatees.

The promulgation of this rule would allow the Service to authorize the incidental, unintentional take of manatees resulting from the issuance of such permits for these types of development activities in Florida, subject to the issuance of a LOA to the NOAA.

#### e. U.S. Coast Guard

The USCG's primary responsibility since its creation in 1790 is law enforcement under section 14 U.S.C. 89(a), which specifically gives USCG officers and petty officers the authority to make inspections, searches, seizures, and arrests for violations of laws of the USCG law enforcement efforts include Living Marine Resources Law Enforcement, Drug Interdiction, Alien Migrant Interdiction Operations, and General Law Enforcement. As a lead Federal agency for at-sea-enforcement of national fisheries and marine resource laws and international treaties, the USCG conducts a number of at-sea enforcement activities which benefits fisheries, important marine habitats, and protection of threatened and endangered species, including the Florida manatee.

The USCG is involved in permitting marine events (*e.g.*, high speed races, parades, and other events) in Florida waters inhabited by manatees, making their involvement essential in the conservation of the Florida manatee. The publication of this rule would allow the Service to authorize the incidental, unintentional take resulting from the issuance of such permits for manatees for these types of activities in Florida, subject to the issuance of a LOA to the USCG.

f. National Park Service

The NPS administers a system of national parks, monuments, historic sites, and recreation areas. The objectives of the NPS are to administer the properties under its jurisdiction for the enjoyment and education of our citizens, to protect the natural environments of the areas, and to assist States, local governments, and citizen groups in the development of park areas, the protection of the natural environment, and the preservation of historic properties. The NPS has management responsibilities in Florida for the following areas where the Florida manatee occurs: Everglades National Park, Biscayne Bay National Park, Canaveral National Seashore at Merritt Island, Desoto National Park, Fort Matanzas and Castillo de San Marcos in St. Augustine, and Timucuan Ecological and Historic Preserve in Jacksonville.

The publication of this rule would allow the Service to authorize the incidental, unintentional take of manatees resulting from the issuance of permits for these types of management activities in Florida, subject to the issuance of a LOA to the NPS.

2. Miccosukee and Seminole Tribes of Florida

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the DOI's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. The Service has determined that there are no tribal lands essential for the conservation of the Florida manatee; therefore, proposing to develop incidental take regulations for government activities related to the operation of watercraft within certain areas of the species' range in Florida, will not adversely affect Tribal lands.

3. State Agencies

a. Florida Fish and Wildlife Conservation Commission

The FWC came into existence on July 1, 1999, when the Florida Legislature combined all of the staff and commissioners of the former Marine Fisheries Commission, elements of Marine Resources and Law Enforcement of the DEP, and all of the employees and commissioners of the former Game and Fresh Water Fish Commission.

Within FWC, the Office of Environmental Services (OES) assists in the maintenance and enhancement of fish and wildlife habitat by monitoring and commenting on the range of development and associated resource management issues. OES seeks to reduce unnecessary human cultural impacts on Florida's fish and wildlife by providing technical assistance to private landowners and consultants, and managing the agency's land acquisition efforts and the management of the habitat mitigation lands. The Bureau of Protected Species Management (BPSM) manages the Florida manatee, sea turtles, and other types of listed sea life.

The publication of this rule would allow the Service to authorize the incidental, unintentional take

resulting from the issuance of such permits for manatees for these types of management activities in Florida, subject to the issuance of a LOA to the FWC.

b. Florida Department of Environmental Protection

The DEP is the lead agency in State government for environmental management and stewardship. The DEP administers regulatory programs and issues permits for air, water and waste management. It oversees the State's land and water conservation program, Florida Forever, and manages the nationally award-winning Florida Park Service. In 1993, the Florida Legislature merged the Department of Environmental Regulation with the Department of Natural Resources to form the DEP. The DEP is one of 15 State government agencies under the executive branch of the Governor. The DEP administers the Section 401 Water Quality Certification program under the CWA. As such, the DEP reviews permits for various water access facilities.

The publication of this rule would allow the Service to authorize the incidental, unintentional take resulting from the issuance of such permits for manatees for management activities in Florida, subject to the issuance of a LOA to the DEP.

c. Florida Water Management Districts

Florida is divided into five water management districts which are dedicated to the preservation and management of Florida's water resources. These agencies are responsible for:

- 1) Issuing permits for various water use activities and/or activities that have the potential to adversely impact ground or surface water resources and adjacent lands;
- 2) Buying land to preserve or restore vital wetlands and water resources;
- 3) Conducting research about the quality and quantity of ground and surface water resources;
- 4) Mapping ground and surface water resources; and
- 5) Conducting outreach and public education programs.

As part of their surface water management programs, the districts (except for Northwest Florida Water Management District) administer the State's stormwater management program, which increases the districts' contacts with local governments by directing the districts to help with the development of the water elements in local government comprehensive plans.

The following water management districts are responsible for permitting activities in the geographic areas containing manatee habitat that may be subject to the MMPA rule:

- 1) **The St. Johns River Water Management District** is responsible for managing ground and surface water supplies in all or part of 19 counties in northeast and east-central Florida, with offices located in Palatka, Jacksonville, Altamonte Springs, and Palm Bay.

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- 2) **The South Florida Water Management District** covers the southern portion of the Atlantic coast from Fort Pierce south, the Everglades, Florida Bay and the southwest coast to Fort Meyers.
- 3) **The Southwest River Water Management District** covers from Levy County south to Charlotte County.
- 4) **The Suwannee River Water Management District** covers 14 counties from Levy County north to Jefferson County along the west coast of Florida.

The publication of this rule would allow the Service to authorize the incidental, unintentional take resulting from the issuance of such permits for manatees for management activities in Florida, subject to the issuance of a LOA to these Water Management Districts.

#### 4. Local Agencies

In October, 1989, the Governor and Cabinet directed 13 "key" counties to develop Manatee Protection Plans (MPP). The FWC encourages county MPPs to be adopted as an amendment to the counties' comprehensive plans. The individual components--boat facility siting, etc., must be compatible with local policies and ordinances while addressing manatee concerns.

FWC-approved plans are in place for Citrus, Collier, Dade, Duval, Indian River, and St. Lucie counties. Brevard, Broward, Lee, Martin, Palm Beach, Sarasota, Volusia counties have plans currently under various phases of development.

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